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May 18, 2004

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

A handwritten signature in blue ink, which appears to read "Thomas L. Garthwaite", is written over the printed name and title.

SUBJECT: **ADULT FILM INDUSTRY HEALTH AND SAFETY**

On April 20, 2004, the Board instructed the Department of Health Services ("DHS") to report back on actions which can be taken by California Occupational Safety and Health Administration ("Cal/OSHA") or the local health officer to assure safety in the adult film industry. This memorandum contains DHS' response to your request.

Policy options outlined in this memorandum have emerged out of numerous meetings and discussions that Los Angeles County ("LAC") DHS Public Health has had on this issue with Cal/OSHA, other units of the Department of Industrial Relations, the California Labor Commissioner, members of the State Assembly, County Counsel, the Chief Administrative Office, the Los Angeles City AIDS/HIV Discrimination Unit, Los Angeles City AIDS office, Adult Industry Medical (AIM, the principal source of HIV and STD testing for the adult film industry), and performers and producers in the adult film industry. Many of these contacts were initiated prior to the recent outbreak of HIV among industry performers and have continued and intensified since first reported on April 13, 2004.

The principal policy options that have emerged from inter-agency consultations during 2003-04 include the following:

1) **Using Existing Cal/OSHA Frameworks**

Accident Investigation. On April 20, 2004, the LAC Health Officer, Dr. Fielding, requested Cal/OSHA conduct an accident investigation based on the reported HIV infection of Lara Roxx (stage name) during production of an adult film on March 24, 2004. This investigation is

currently ongoing. Cal/OSHA will determine if an employee-employer relationship existed and if any existing workplace standards were violated and may take other action.

Application of Existing Standards. As discussed in my memorandum of February 27, 2003, Cal/OSHA has at least two existing standards that are believed to be applicable to the adult film industry and has expressed interest in pursuing these applications. The first of these is the Illness and Injury Prevention Program (IIP Program, Title 8 of the California Code of Regulations §3203). Sexually Transmitted Disease Program ("STDP") and Cal/OSHA, working together as part of a larger inter-agency working group on worker health and safety in adult film, established through STDP efforts on August 7, 2003, had already collaborated to develop a model standard for the adult film industry, and had completed a draft of this program at the time of the recent HIV outbreak. As part of the draft, employers which adopt and implement the model program "in good faith" are deemed to be in compliance with §3203, while those which do not implement the model program must be able to show that they have effectively complied through other means. Therefore, in practice, it is believed that Cal/OSHA could use the model program to enforce comprehensive approaches to disease prevention in this industry.

The second potentially applicable standard is the Bloodborne Pathogens (BP, Title 8 of the California Code of Regulations §5193). BP imposes explicit requirements on employers whose workers are likely to be exposed to blood or other potentially infectious materials ("OPIM"). OPIM includes semen and other bodily fluids that are routinely encountered in the adult film industry. The requirements are designed to prevent any contact with blood or OPIM. Application of BP to this industry would at a minimum require the use of condoms and dental dams (the only personal protective equipment available to prevent exposure) for all direct sexual contact, including oral sex. The use of condoms for oral sex would represent a qualitative change in current practices. Producers have informed STDP that some portion of the industry would resist such a requirement.

Adult Film Industry Worker Educational Outreach Program. Cal/OSHA is convening a planning meeting on May 25, 2004 to develop a special educational outreach program for workers in this industry, related to workplace health and safety.

2) Using Powers of the Local Health Officer

Special Powers of the Health Officer. In response to the recent unusual outbreak of HIV in the industry, the LAC Health Officer issued a public health order pursuant to California Health and Safety Code §120175. The purpose of the order was to offer additional testing for performers, if requested, using the LAC Public Health Laboratory in conjunction with AIM testing, and to attempt to determine non-industry contacts, if any, of performers who had been reported by AIM to have become recently infected with HIV. The basis for this order was concern over the potentially rapid spread of HIV and other STDs due to the high number of sexual partners and sexual contacts within the adult film industry, the possible transmission to private sex partners of performers, and transmission to clients of performers who also work as escorts.

Given this recent outbreak and the concerns that it raised, STDP will be consulting with County Counsel to determine whether the Health Officer has the authority to regulate health practices within the adult film industry, such as requiring condom use on adult film work sites.

DHS has simultaneously pursued numerous other avenues to address adult film health issues, including:

Request for NIOSH HHE. The National Institute of Occupational Safety and Health ("NIOSH") functions as a research counterpart to OSHA. As part of its duties, NIOSH conducts Health Hazard Evaluations ("HHEs"), to perform a scientific assessment of hazards in specific types of workplaces, and recommend ways to address these hazards. Such recommendations are advisory only: NIOSH is not a regulatory agency and does not have the authority to create or enforce regulations. However, these recommendations could be used at the state or federal level to create appropriate regulations. Other non-industrial industries for which HHEs have been conducted include exotic dance establishments and tattoo parlors. The Health Officer requested on April 29, 2004, that NIOSH conduct a HHE.

Direct Consultation to Industry Performers and Producers. STDP and OAPP have already held or attended meetings involving industry performers and producers. At these meetings, clear opportunities were presented to answer technical questions regarding STD/HIV transmission, risk, and testing, and to encourage STD testing in the gay male segment of the industry. Through these meetings and ongoing contacts with AIM, DHS continues to expand industry contacts, and to pursue collaborative activities related to education, training, and testing.

Another possible solution is the use of special effects to eliminate the visual appearance of the condom. This solution allows protection of the worker, while obviating the industry complaint that condoms affect the product and are less desirable to consumers. To this end, STDP has facilitated contact between individuals who work in special effects in the mainstream film industry and adult film producers.

Assistance to Legislators. The office of Paul Koretz, Chair, State Assembly Committee on Labor and Employment, has been involved in DHS meetings and discussions related to adult film worker health since they commenced last year. Further interest by the State Assembly was indicated by the recent amendment of AB 2798 (Leslie) to address worker health issues in the adult film industry. This bill was tabled in the Assembly Health Committee on May 4, 2004, at the request of Assemblymember Koretz, and with his request a Legislative hearing is now scheduled for June 4, 2004, in Van Nuys, CA.

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The legislative approach to this issue has two advantages. First, it could offer clear guidelines specific to the industry at the state level. Second, it would enable resolution of possible conflicts of existing industry practices with other areas of state law. DHS intends to continue to pursue all the above policy options, as indicated, and will update the Board on these efforts.

If you have any questions or need additional information, please let me know.

TLG:rkf
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c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors